MOTION FILED
JAN 19 1978

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO. 77-899

CARL MILLER, ET AL., Appellants,

v.

THE HONORABLE GERALD HEFFERNAN,
STATE TAX COMMISSIONER, Appellee.

On Appeal From the
Supreme Court of Connecticut

&

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF SALISBURY TAXPAYERS ASSOCIATION AS AMICUS CURIAE

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MOTION OF SALISBURY TAXPAYERS ASSOCIATION
FOR LEAVE TO FILE BRIEF
AMICUS CURIAE

Pursuant to the United States Supreme Court's Rule 42, the Salisbury Taxpayers Association hereby moves this Court for leave to file the attached brief amicus curiae. While the appellants have cooperated with the preparation of this brief amicus curiae, the appellee has not consented as of the time of this brief.

The Salisbury Taxpayers Association is an unincorporated association organized about eight years ago by concerned taxpayers who lived in Salisbury and in several neighboring towns in the northwest corner of Connecticut. At present, there are approximately 250 dues-paying members of this association. The

purpose of the Salisbury Taxpayers Association is to promote fair taxation on national, state, and local levels, particularly with respect to its effects upon the residents of the Salisbury area.

The Salisbury area is very popular with the elderly as a place to live in retirement, and it is believed that some thirty-five to forty percent of the residents of the area are retired persons who are age 65 or older. The membership of the Salisbury Taxpayers Association is heavily peppered with such retired persons, who must live on investment income, including dividends taxed by Connecticut. These elderly retired people feel that the Dividends Tax portion of Chapter 224 of the Connecticut General Statutes discriminates against them. It deliberately places them in the primary group bearing the burden of that tax. This classification clearly results from such an arbitrary design as to be wholly without the constitutionally required rational basis. The Salisbury Taxpayers Association, therefore, has a very real interest in representing these concerns of its membership and of the taxpayers of the Salisbury community.

The appellants in this action are well qualified to represent their personal interests. However, a decision of such far-reaching effect as that of the

Connecticut Supreme Court, below, should be considered in light of the interest of the broad spectrum of persons who are directly affected by it, including the taxpayers represented by the Salisbury Taxpayers Association. In addition, the Salisbury Taxpayers Association's brief presents to this Court decisions showing that Chapter 224 of the Connecticut General Statutes establishes arbitrary and unreasonable classifications in violation of the equal protection provisions of Section 1 of the Fourteenth Amendment to the United States Constitution by singling out for taxation dividends received by individuals, while not taxing interest and other types of investment income received by them. This is a different aspect of the issue presented than that which the appellants present in their jurisdictional statement, and which aspect this Court should have a full opportunity to consider.

The Salisbury Taxpayers Association submits that its view of this appeal will be of value to the Court, and respectfully urges this Court to grant this motion for leave to file the attached brief as <u>amicus curiae</u>.

Respectfully submitted,

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BRIEF OF SALISBURY TAXPAYERS ASSOCIATION AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The interest of Amicus Curiae is set out in the Motion for Leave to File, supra.

JURISDICTION

As stated in their jurisdictional statement, appellants brought this action in the Connecticut Superior Court for a refund of the Dividends Tax which they paid to the State of Connecticut. The constitutional issues were reserved by the Superior Court for the advice of the Connecticut Supreme Court, which decided the case on September 27, 1977. This decision is a final settlement of the case. New York, N.H. and H.R. Co. v. Fair Haven and Westville R. Co.,71 Conn. 584, 590, 42 A.652 (1899). As such, this decision is a "final judgment or

decree", within the meaning of 28 U.S.C. §1257. Cox Broadcasting Co. v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d. 328 (1975). Notice of appeal to the United States Supreme Court was filed in the Connecticut Supreme Court on December 13, 1977.

QUESTION PRESENTED

Whether this Court should note probable jurisdiction of this appeal as presenting a substantial federal question, in that Chapter 224 of the Connecticut General Statutes denies the equal protection of the laws guaranteed by Section 1 of the Fourteenth Amendment to the United States Constitution by singling out for taxation dividends received by individuals and leaving untaxed other types of investment income.

ARGUMENT

In their jurisdictional statement, appellants have persuasively argued that the Dividends Tax imposed by Chapter 224 of the Connecticut General Statutes violates the equal protection provision of the Fourteenth Amendment to the United States Constitution, since it places a substantially disproportionate tax burden on persons over 65 years of age. In this argument, we wholeheartedly concur.

In addition, the Connecticut Dividends Tax

also violates the equal protection provision because it is based on a wholly unreasonable and irrational classification which singles out for taxation dividends received by individuals, while leaving interest and other types of investment income untaxed.

The Connecticut General Assembly, pursuant to Article 3 of the Constitution of the State of Connecticut, possesses the power to levy taxes. This power has apparently never been constitutionally limited "except by the constitutional requirements of equal protection and due process". Kellems v. Brown, 163 Conn. 478, 313 A.2d 53,58 (1972), appeal dismissed, 409 U.S. 1099 (1973). This requirement of equal protection can, however, provide a serious limitation to this taxing power when an element of unreasonableness and irrationality is used to support the imposition of a particular tax and the classifications thereunder. This well-established rule is based on this Court's decision in Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 64 L.Ed. 989 (1920) in which the Court said:

> It is unnecessary to say that the "equal protection of the laws" required by the 14th Amendment does not prevent the states from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial

> relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. The latitude of discretion is notably wide in the classification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy. [citations omitted].

This point is concisely stated by the appellants in their jurisdictional statement herein. Particular note should be given to this Court's rulings that a classification cannot be allowed if it is offensive to "the plain standards of common sense", Hartford S.B.I. and Ins. Co. v. Harrison, 301 U.S. 459, 462, 57 S.Ct. 838, 81 L.Ed.1223 (1937), or if it is "palpably arbitrary". Allied Stores of Ohio v. Bowers, 358 U.S. 522, 527, 79 S.Ct. 437, 3 L.Ed.2d 328 (1959)

The classifications made as a result of a taxation statute must rely upon a substantial distinction between the properties or incomes separately classified. E.g. Royster Guano Co. v. Virginia, supra, 253 U.S. at 415. Indeed,

> That is to say, mere difference is not enough: the classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. " [citation omitted, emphasis in original]. Hartford S.B.I. & Ins. Co. v. Harrison, supra, 301 U.S. at 462.

It is respectfully submitted that no legitimate reason in furtherance of a proper legislative purpose may be found for taxing dividend income alone of all forms of investment income. Therefore, such an underlying scheme of classification can only be arbitrary and offensive to "the plain standards of common sense". Hartford S.B.I. and Ins. Co. v. Harrison, supra. The dividend income taxed by Connecticut clearly belongs to the larger classification of investment income. This natural classification is recognized by the Connecticut courts. Connecticut Mutual Life Ins. Co. v. Rogers, 113 Conn. 14, 22, 154 At. 246 (1922). Furthermore, a review of the history of Connecticut's taxation of intangible property or the income from intangibles demonstrates that the Connecticut legislature has, for over a century, uniformly treated stocks and bonds or dividends and interest as being a single form of intangible property or a single source of investment income. Snyder, Taxing the Unlanded Gentry: A New Trend in Taxation of Intangible Property, 4 Conn. L.Rev. 310, 314-323 (Fall, 1971).

Without resorting to arbitrary classifications and pure speculation, one cannot conceive of a basis in public policy for the taxation of dividend income alone. A desire to protect the owners of small savings

deposits cannot be the aim of the scheme underlying the Dividends Tax, since all forms of interest income remain untaxed. Additionally, a classification based on a view of dividend income and capital gain as speculative investments and interest income as a safe non-speculative investment can have no merit.

A major source of capital gains (which are taxed under Connecticut's classification scheme) is real estate investment. This certainly cannot be said to be inherently speculative. Similarly, a number of investments paying interest, such as debentures issued by a new and unproven company, are far more speculative than investments in many common stocks.

CONCLUSION

No reasonable difference "having a fair and substantial relation to the object of the legislation," Royster Guano Co. v. Virginia, supra, can be found to support the classification made by the Connecticut Dividends Tax, which subjects only dividend income to a tax. Since any explanation which might be offered offends ordinary common sense, this Court should hold that the Connecticut legislature went beyond its wide latitude of discretion in enacting the Dividends Tax. Therefore, this Tax violates the equal protection provision of the Fourteenth Amendment.

The appellants' challenge to this tax presents a substantial federal question upon which this Court should rule. The Salisbury Taxpayers Association, amicus curiae, respectfully submits that this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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